

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5386 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHUPENDRA ISHWARBHAI CHUNARA (VAGHRI) : Petitioner.

Versus

COMMISSIONER OF POLICE & Others : Respondents.

Appearance:

MR ANIL S DAVE for Petitioner
Mr. S.P. Dave, A.G.P. for Respondents.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 01/12/97

ORAL JUDGEMENT

By this application under Article 226 of the Constitution of India, the petitioner calls in question the legality and validity of the detention order, passed by the Police Commissioner of Ahmedabad city on 10th July 1997, invoking the powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the Act').

2. The facts which led the petitioner to prefer this

application may in brief be stated. About four complaints of the offences under Section 379 read with 114 came to be lodged with Vatva police station alleging that near the religious places or the places where people flock or happen to be there the petitioner used to snatch away golden chains or other valuable articles from them and thereby he was striking the terror. The petitioner was considered to be the head-strong person and so no one was daring to come forward and lodge the complaint or take any legal action was also the outcome of the investigation when carried out in connection with the aforesaid four cases. After inquisition it was also found that the petitioner was the yahoo & rogue and was by his nefarious activities creating panic in the society challenging the maintenance of public order. The petitioner used to extort money by giving threats or resorting to coercive measures, and those who did not yield to his whims they were assaulted & beaten brutally and were then made to succumb to his whims. The people worrying their safety were choosing to suffer and tolerate the wrongs done rather than to bring him to book. Hearing about the petitioner or seeing him the people used to chevy, as they were feeling insecured. The Police Commissioner then found that to curb the anti-social activities of the petitioner and make the people feel free there was no way out but to detain him as under general law sounding dull it was difficult to control his activities taking appropriate action. He therefore passed the order in question on 10th July 1997. Consequent upon the same the petitioner came to be arrested.

3. The petitioner has challenged the legality and validity of the order on different grounds. According to him, there is no justification to describe him as the head-strong person or a dangerous person. Necessary bail papers were not given to him for making effective representation though the petitioner was released on bail. After he was released on bail by the court, the detention order was passed, and it was only with a view to see that he was put behind bars any how. The order passed is therefore malafide. Further, assailing the order it is submitted that the particulars about the witnesses giving the statement against him ought to have been furnished to him so as to make effective representation. There was no justification to suppress the same, because for the same the requirements of Section 9(2) of the Act were not satisfied. He has thus assailed on the ground of non-supply of better particulars also.

4. It would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22(5) of the Constitution of India, what becomes clear is that the grounds on which order of detention has been made are required to be communicated to the detenu and further an opportunity of making the representation against the order of detention is required to be given. The detenu is therefore required to be informed not merely factual inference and factual materials which led to inference namely not to disclose the certain facts but also the sources from which the factual material is gathered. The disclosure of sources would enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources can be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act the detaining authority is empowered to withhold such facts and particulars the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has to be exercised sparingly and in those cases where public interest dictating non-disclosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons the authority making the order has to make necessary inquiry personally. What can be deduced from such constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. No doubt he can entrust the task of inquiry to any one else found fit for the purpose but in that case also he has to take decision only after application of mind to all the facts & circumstances on record. If he mechanically endorses or accepts the recommendation of an outside or inferior

authority in that behalf the exercise of power would be vitiating as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power the other side may challenge the privilege exercised on the ground that the same is vitiating by factual or legal malafides. For my such view, a reference to a decision in the case of Bai Amina, w/o. Ibrahim Abdul Rahim Alla v. State of Gujarat and others - 22 G.L.R. 1186 held to be the good law by the Full Bench of this court in the case of Chandrakant N. Patel v. State of Gujarat & Others - 35 (1) [1994(1)] G.L.R. 761, may be made.

5. In view of such law made clear hereinabove, the order is not passed. Reading the order produced at Annexure 'C', it becomes abundantly clear that the Commissioner of Police did not try to satisfy himself by making necessary personal enquiry applying mind. He entrusted the work to his subordinate and mainly relied upon the report made by the subordinate without any further dissection thereof which is not in consonance with the provision of Section 9(2) of the Act. The Police Commissioner ought to have after the receipt of the report from his subordinate, on the basis of other materials or considering the materials before him applying mind verified whether the fear expressed by the witnesses was honest, genuine and reasonable in the circumstances or was nothing but imaginary or fanciful or an empty excuse. When he has not accordingly verified and simply relied upon the opinion formed by his subordinate the privilege exercised cannot be said to be just and proper. In view of the fact, it can further be said that when there was no justification to exercise the discretion he ought to have esteeming the right of the petitioner, furnished the particulars he suppressed. For want of those particulars the right of the petitioner to make effective representation is jeopardised. The continued detention, therefore, cannot be held to be legal, but the same can be termed arbitrary. In view of the fact, the order of detention is required to be quashed.

6. For the aforesaid reasons, the order of detention

dated 10th July 1997 being illegal and invalid is hereby quashed. The petitioner is ordered to be released forthwith if no longer required in any other case. Rule accordingly made absolute.

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